

CALIFORNIA LEGISLATURE

STATE CAPITOL
SACRAMENTO, CALIFORNIA
95814

May 7, 2008

Dear Editor,

In 1991, the Americans with Disabilities Act (ADA) was signed into law, affirming the civil rights of millions of Americans with disabilities. Over the last 17 years, progress has been made toward more accessible communities. Yet, significant gaps in access persist, despite the efforts by many to comply. In recent years, an increasing number of lawsuits filed in cases of non-compliance have regrettably pitted portions of the business and disability communities against one another. To address this issue, we have jointly authored Senate Bill 1608, a bi-partisan measure to promote increased ADA compliance through education and the formation of a disability access commission, with the complementary goal of reducing the need for litigation.

Over the past year and a half, we have successfully brought together leaders from the disability and business communities to better understand each other's perspective and find common ground. As we grappled with this complex issue, we kept one goal in mind - craft a legislative solution that absolutely protects the civil rights of people with disabilities, educates businesses of their rights and obligations under access laws, and encourages compliance in a way that reduces exposure to litigation. The language in SB 1608 reflects that goal.

SB 1608 takes a unique approach to resolving this issue by offering a multi-faceted strategy to effectively increase compliance. Under our bill, for the first time in California history, we will enact disability access-specific continuing education requirements for building officials and architects. One of the major issues vocalized by the disability community is the lack of knowledge about access issues among those involved in the building and planning process - SB 1608 takes an important step toward remedying that problem. In addition, SB 1608 will require all inspections relating to permitting, plan checks, or new construction in privately owned buildings to be conducted by a building inspector who is a Certified Access Specialist (CAsp). This will minimize, to the maximum extent possible, the inadvertent approval of non-compliant projects.

Another major concern raised by the disability community is the lack of a statewide coordinator on disability access issues and their lack of adequate representation on state boards and commissions whose operation may greatly impact disability access. Again, for the first time in California history, SB 1608 addresses this issue by creating the California Commission on Disability Access, which will be an independent state entity created "with a view to developing recommendations that will enable individuals with disabilities to exercise their right to full and equal access to public facilities, and that will facilitate business compliance with the laws and regulations to avoid unnecessary litigation." The Commission will be responsible for monitoring disability access compliance, making recommendations to the Legislature on needed changes to promote access compliance, and developing complete information on access requirements and disseminating that information.

During our research, we came to understand that most in the business community want to comply with access laws, but they may have relied on erroneous advice, incorrect drawings or simply do not understand their duties and obligations under these laws. In order to encourage business owners to meet construction-related access requirements, SB 1608 establishes a process for businesses to work with a CASp to assess construction-related access barriers and obtain necessary recommendations to come into compliance. Business owners who take the proactive step of hiring a CASp and following the CASp recommendations would be deemed a "qualified defendant" if they are later sued on a disability access claim. As a qualified defendant, these businesses can request a limited stay and an early settlement conference to possibly resolve the litigation at an early stage and thereby avoid additional damages and costly attorneys' fees and expenses. For other defendants who did not use the CASp process, the stay and early evaluation conference provisions would not apply and those other cases would proceed as they would under existing law.

While we believe that the components that make up SB 1608 will work well together to increase access compliance, it is important to note what this bill does not do. SB 1608 **does not** create a 'safe-harbor.' SB 1608 **does not** create a 'right-to-cure' of any period. SB 1608 is not a pre-lawsuit notification bill and **does not** set up constraints on important civil rights laws. Under SB 1608, unchanged from existing law, there are no pre-conditions a person with disability or his or her attorney must meet in order to file a civil rights action for a disability access violation.

Further, the CASp inspection and report **does not** bind a court in any way. In fact, a business facility that has been CASp inspected can still be sued if there is indeed an access violation on the property. The CASp inspection and report **do not** prevent a recovery of damages for a person with a disability who is unable to access a place of public accommodation because of an access violation.

As noted, the issues surrounding disability access are extremely complex, and for too long people with disabilities have struggled for greater compliance and businesses have labored to meet their responsibilities. The importance of these laws impels us as authors to act in a manner that each one of us believes will achieve greater accessibility throughout the state.

As authors we hold to the axiom that ignorance of these laws is not an excuse for non-compliance, which is why SB 1608 is so comprehensive and why so much care and time has been spent crafting this bi-partisan legislative package.

Respectfully submitted,



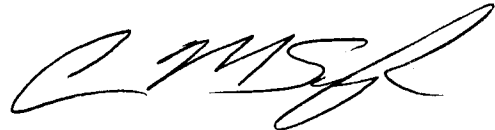
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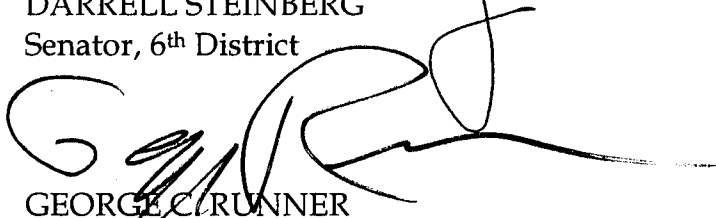
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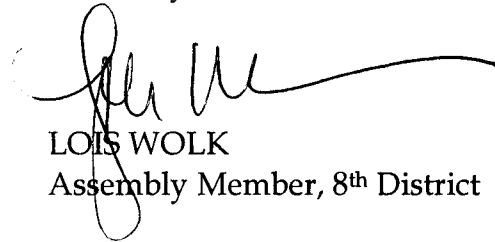
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